

EXHIBIT B

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

**IN RE: CATHODE RAY TUBE (CRT)
 ANTITRUST LITIGATION**

Master File No. 3:07-cv-5944 SC

MDL No. 1917

This document relates to:

ALL INDIRECT PURCHASER ACTIONS

**STATEMENT AND CONDITIONAL
 OBJECTION REGARDING MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENTS WITH
 THE PHILIPS, PANASONIC, HITACHI,
 TOSHIBA AND SAMSUNG SDI
 DEFENDANTS**

Hearing Date: July 31, 2015

Time: 10:00 a.m.

Courtroom: One, 17th Floor

Judge: The Honorable Samuel Conti

**STATEMENT AND CONDITIONAL OBJECTION TO INDIRECT PURCHASER PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL**

Master File No. 3:07-cv-5944-SC, MDL No. 1917

1 Rule 23(e) of the Federal Rules of Civil Procedure requires court approval of any
2 settlement of claims brought on a class basis. *In re High-Tech. Empl. Antitrust Litig.*, 2014-
3 2 Trade Cas. (CCH) ¶78,864 at *12 (N.D. Cal. Aug. 8, 2014). The purpose of the Court's
4 preliminary evaluation of proposed settlements is to determine whether "the proposed
5 settlement appears to be the product of serious, informed, non-collusive negotiations, has no
6 obvious deficiencies, does not improperly grant preferential treatment to class representatives
7 or segments of the class and falls within the range of possible approval." *In re NASDAQ*
8 *Market Makers Antitrust Litigation*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

9 In examining a class action settlement agreement, a district court must be satisfied
10 that "class counsel have [not] allowed pursuit of their own self-interests ... to infect the
11 negotiations." *Cordy v. USS-Posco Indus.*, No. 12-cv-00553-JST, 2013 U.S. Dist. LEXIS
12 108952, at *7 (N.D. Cal. Aug. 1, 2013) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*,
13 654 F.3d 935, 947 (9th Cir. 2011)). One category of issues on which courts focus in
14 evaluating a class settlement is "the reasonableness of any provisions for attorney fees,
15 including agreements on the division of fees among attorneys...." *Manual for Complex*
16 *Litig.* (Fourth) §21.62 (2004).

17 The Proposed Settlements currently before this Court contain contractual agreements
18 between Lead Counsel and the various defendants purporting to empower Mario N. Alioto to
19 "allocate the attorneys' fees among Plaintiffs' Counsel." The relevant paragraphs containing
20 these provisions, which are extraordinarily unusual if not completely unprecedented in the
21 long experience of the undersigned, are set out below:

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DEFENDANT	"Class/Lead Counsel" Definition	Attorney Fee Allocation Provision
PHILIPS Doc. 3862-1	"Class Counsel" shall refer to Mario N. Alioto. See Philips Settlement Agreement ("SA") ¶7.	After this Agreement becomes final within the meaning of Paragraph 11, the Fee and Expense Award shall be paid to Class Counsel within ten (10) business days. ¹ Class Counsel shall allocate the attorneys' fees among Plaintiffs' counsel in a manner which Class Counsel in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action. See Philips SA ¶23b.
PANASONIC Doc. 3862-2	"Class Counsel" shall refer to Mario N. Alioto. See Panasonic SA ¶7.	Class Counsel shall allocate the attorneys' fees among class counsel in a manner which he in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action. See Panasonic SA ¶22b.
HITACHI Doc. 3862-3	"Class Counsel" shall refer to Mario N. Alioto. See Hitachi SA ¶7.	Class Counsel shall allocate the attorneys' fees among plaintiffs' counsel in a manner which he in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action. See Hitachi SA ¶22(a).
TOSHIBA Doc. 3862-4	"Class Counsel" shall refer to Mario N. Alioto. See Toshiba SA ¶7.	Class Counsel shall allocate the attorneys' fees among plaintiffs' counsel in a manner which he in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action, provided that if a court rules otherwise, Plaintiffs shall not have a right to rescind this Agreement based on that ruling. See Toshiba SA ¶22(a).
SAMSUNG Doc. 3862-5	"Class Counsel" shall refer to Mario N. Alioto. See Samsung SA ¶7.	The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund to any plaintiffs' counsel seeking such payment within five (5) court days after this Agreement becomes final as set forth in Paragraph 11 of this Agreement. Class Counsel shall allocate the attorneys' fees among plaintiffs' counsel in a manner, subject to approval of the Court, which he in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action. See Samsung SA ¶23(b).

¹ This provision for payment of the Court's entire fee award and expense reimbursement directly to Mr. Alioto does not appear in the other settlement agreements. Most are silent on the subject of payment, other than the agreement with Samsung which provides for payment, after Mr. Alioto has performed the allocation, to "any plaintiffs' counsel seeking such payment."

1 Awarding attorneys' fees from a common fund to the lawyers whose work produced
2 the fund is uniquely within the purview and discretion of the presiding court. *See, e.g.,*
3 *Mercury Interactive Corp Securities Litigation v. Mercury Interactive Corp*, 618 F.3d 988
4 (9th Cir. 2011). To be sure, in the exercise of that discretion, a district court may determine
5 that it is appropriate to refer the issue of the fee allocation among counsel to a Special
6 Master, as Judge Illston did in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, No. M-07-
7 1827 SI, MDL No. 1827 (N.D. Cal), or to the reasoned discretion of a committee made up of
8 the leadership of the case, as Judge Hamilton did in *In Dynamic Random Access Memory*
9 *(DRAM) Antitrust Litigation*, No. M02-1486-PJH, MDL No. 1486 (N.D. Cal.). The critical
10 aspect is that this decision is explicitly made by the court, upon a full record, and after the
11 opportunity is given for all interested parties to be heard.

12 Settlement agreements, even in class actions, are private contracts between the parties
13 signatory thereto. *See, e.g., Echeheart v. Verizon Wireless*, 609 F.3d 590 (3rd. Cir. 2010).
14 Court approval pursuant to Rule 23 is merely a condition precedent to the finality of the
15 contract between the parties, and does not make the presiding judge a party to the agreement
16 itself. *Id.* Therefore, even if given final approval, the contractual provisions cited above
17 would merely prevent these defendants from objecting should this Court decide to appoint
18 Mr. Alioto as the sole arbiter of the remuneration to which his fellow counsel are entitled.
19 However, no agreement between Mr. Alioto and defendants has the power to divest this
20 Court of its duty to exercise its discretion to award reasonable, fair and adequate fees to the
21 various attorneys in this case. Neither would the approval of the proposed settlement
22 agreements as a whole constitute the required determination by the Court that Mr. Alioto's
23 judgment alone is a fair, reasonable and adequate methodology for the apportionment of any
24 aggregate fee award that the Court may make.

25 Accordingly, the undersigned counsel and the putative settlement class members they
26 represent do not believe that it is necessary to interpose a formal objection to the preliminary
27 approval of settlement agreements containing the above-cited provisions. Counsel do

1 respectfully request the right to be heard at the proper time, on the question of the adoption
2 by the Court of an appropriate procedure and methodology for arriving at a fee award and
3 allocation that complies with the provisions of Rule 23 and due process.

4 In the event that any party takes the position that an order preliminarily approving the
5 settlements (such as the proposed order submitted with Lead Counsel's motion) constitutes
6 the Court's appointment of Mr. Alioto to allocate an aggregate fee and expense award,
7 counsel request that this Statement be deemed an objection to the preliminary approval of the
8 settlements on the grounds that the provisions cited above do not adequately ensure that a fair
9 and reasonable fee will be awarded to each attorney, as required by Rule 23 and the common
10 fund doctrine. Counsel suggest that the superior mechanism for ensuring that all whose
11 efforts contributed to the prosecution of this litigation are treated fairly would be the
12 appointment of a Special Master to make a recommendation on all fee and expense related
13 issues.

14 Dated: June 12, 2015

Respectfully submitted,

15 /s/ Josef D. Cooper
16 Josef D. Cooper

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